

CATASTROPHIC INJURY DESIGNATION: A GUIDE THROUGH THE MAZE

I. Summary of Statutory Changes to O.C.G.A. §34-9-200.1(g)(1)-(6)

A. Prior to 7/1/92

1. Definitions given in statute, but vague
 - a) “Multiple amputation”
 - b) “Severe brain or closed head injury”
 - c) “Any other injury determined to be catastrophic in nature by the Board”
 - d) Because lifetime indemnity benefits were in effect, only differences catastrophic designation made prior to 7/1/92 were as follows:
 - i. Rehabilitation supplier had to hold catastrophic registration
 - ii. Rehabilitation case had to be covered by a plan at all times

B. 7/1/92 through 6/30/95

1. Major aspects:
 - a) Catastrophic designation based on receipt of SSDI/SSI benefits or eligibility for such benefits, rather than current employability status or release to return to work
 - b) Injury must be compensable W.C. injury
 - c) Majority of disability must be caused by W.C. injury/residuals, even if other conditions also used to qualify for SSDI/SSI
 - d) Much more specific definitions of head injury and of amputations
 - e) Silent on issue of improvement after SSDI receipt

C. 7/1/95 through 6/30/97

1. Employee must be unable to perform previous work or any work available in substantial numbers in the national economy; catastrophic determination now based on whether or not the employee can work

D. 7/1/97 through present

1. or changed to and
2. new phrase added: *for which such employee is otherwise qualified*

II. What the Board needs when a request is submitted for Catastrophic Designation:

For dates of injury prior to 7/1/92:

Any party may request catastrophic designation.

If the employee is requesting catastrophic designation, the employee or his attorney may submit a letter to the Board, copied to all parties and the requested registered catastrophic rehabilitation supplier. The letter should document why the employee feels that his injury is catastrophic in nature. In response to the letter, one of the Board's Rehabilitation Coordinators will review the file and issue an administrative decision or memorandum approving or disapproving catastrophic designation.

If the employer/insurer (or self-insurer) wishes to declare a case catastrophic, they may do so by filing a Form WC-R1 naming a Board-registered catastrophic rehabilitation supplier, if one is not already assigned. Unless objections are filed by the employee or his representative, the case will be accepted by the Board as catastrophic with no further correspondence.

For all dates of injury on or after 7/1/92, if request for catastrophic designation is based on the employee's medical diagnosis:

If the injury is based on §34-9-200.1(g) **1,2,3,4, or 5**: Medical documentation of the injury and its extent.

Spinal cord injury

Is the employee paralyzed? What limbs? Permanently? Loss of bladder/bowel function? Severe problems with gait, even if not paralyzed?

Amputation

If a foot, hand, arm, or leg is amputated, the injury qualifies as catastrophic unless the severed limb was successfully reattached and has regained virtually complete pre-injury function. If several fingers or toes have been amputated, which ones, at what point, and is the hand or foot still functional? Can the employee still pinch or grip with the injured hand? Diagrams showing amputation levels are immensely helpful in these cases. The Board also needs information as to which hand is dominant. Work history can be relevant if the employee has a history of bilateral hand-intensive work, or work which involved extensive standing or walking.

Severe brain or closed head injury:

Can the employee not see, hear, smell, or feel as well as he did prior to the injury? If not, to what extent? Can the employee move as well as he did before he was injured? If not, to what extent and how the employee is unable to move correctly? Can the employee communicate as well as he or she did before the injury? Is the employee's speech clear and does it make sense? Can the employee think and solve problems as well as he or she did before the injury? If not, to what extent is the employee's thinking impaired? Are safety issues involved? Is the employee oriented to time,

place, and person? Has the employee developed seizures as a result of his or her injury? If so, what kind and how often? Are they controlled with medication?

In almost all brain injury cases, a neuropsychological evaluation will be required to obtain the answers to many of the questions noted above. The exception would be if the employee were in a coma, in which case the employee's claim qualifies as catastrophic even without testing.

Burns

First-degree burns do not qualify as catastrophic in nature. The Board needs documentation that the employee has sustained second or third degree burns over at least 25 percent of the whole body, ***or*** third degree burns to five percent or more of the face or hands. Third degree burns, the most severe degree, are sometimes referred to as full thickness burns. If an employee has severe burns, but does not meet the definition given above, the employee's injury may still qualify as catastrophic if he or she has other severe co-existing medical conditions (for example, lung damage, severe infection, etc.)

Blindness

Blindness is defined as bilateral vision of 20/200 or less, with best correction, or bilateral fields restricted to 20 degrees or less. The Board needs specific documentation of the employee's current vision level. However, mitigating factors may include whether the blindness occurs along with other losses, and whether the blindness is progressive.

IF THE REQUEST FOR CATASTROPHIC DESIGNATION IS BASED ON (g)(6), WHAT IS SUMMITTED?

For dates of injury 7/1/92 through 6/30/95:

If the request is based on an employee's receipt of or alleged eligibility for SSDI benefits, the Board needs the employee's medical diagnoses, work history, education level, and most important, *current information regarding whether the employee is released to return to work and if so, with what restrictions.* Additionally, a copy of the Social Security Administration's award of Social Security Disability (SSDI) or Supplemental Security Income (SSI) benefits to the injured employee.

If this is unavailable or a judicial decision was not issued, documentation from the Social Security Administration listing at least the diagnoses on which the employee was found to be disabled, as well as notification that the employee has been approved for SSDI or SSI. (Remember, however, that eligibility for such benefits counts the same as their actual receipt, based on the statute in effect for these dates. Thus, an employee might qualify for SSDI benefits, but not have worked enough quarters to receive them, however the injury might still qualify as catastrophic.).

For dates of injury 7/1/95 through 6/30/97:

The Board needs the following:

Work history of the employee for at least the last 15 years, including the physical demand levels (sedentary, light, medium, heavy) of all jobs and specific skills/training required for them

Education level

Results of academic *testing*, if any has been completed (note that this is not required)

Military history, if any

Notation of any *hobbies* which may have resulted in *transferable skills*

Current information from the authorized treating physician regarding the *employee's current work status*

If the employee is released to at least sedentary duty for at least 8 hours per day, a *labor market survey* is not required, but may be helpful. All labor market surveys should be based on the employee's work release and restrictions, and should be for a work area no more than 30-35 miles from the employee's home.

If the employee is released to sedentary duty, at least 8 hours per day, but with *additional restrictions*, the Board needs documentation of those restrictions.

Information regarding whether or not the employee *can drive* with or without *restrictions*, and whether or not *public transportation* is available in his area.

For injuries that occurred 7/1/95 through 6/30/97, the injury must have precluded the employee from working in his current job or from ANY WORK AVAILABLE IN SUBSTANTIAL NUMBERS WITHIN THE NATIONAL ECONOMY. For these injuries, the Board needs all the information available regarding the employee's ability to work.

Note that on and after 7/1/95, the employee's ability to work is the primary issue for catastrophic designation, not whether or not he receives disability benefits.

For dates of injury 7/1/97 to the present:

Exactly the same information as noted in the section above.

However, by these dates of injury, the phrase *for which such employee is otherwise qualified* had been added to the statute. It is much easier to prove that an employee cannot work due to a combination of his injury and its residuals **and** his limited education and work history than it is to prove that he cannot do any work at all available in substantial numbers in the national economy.

